IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 336 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

B R THAKOR, CONDUCTOR

Appearance:

MR YOGESH S LAKHANI for Petitioner.

MR RV DESAI for Respondent.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 28/03/2002

ORAL JUDGEMENT

The petitioner, Gujarat State Road Transport Corporation, through tis General Manager, has filed this petition under Article 227 of the Constitution of India challenging the judgment & award passed by the Industrial Tribunal, Ahmedabad, dated 26th June 1992, rendered in Reference(IT)No.332/1988 whereby the order of the Second Appellate Authority directing that the intervening period commencing from 20.11.81 to 6.4.83 was to be treated as

leave without pay and further directing that the respondent's pay be reduced by two stages,was modified. According to the petitioner, such modification made by the Industrial Tribunal vide its order dated 26th June 1992 was illegal, unconstitutional, suffers from error apparent on record and hence was required to be quashed and set aside.

2. The brief facts, leading to the present petition are that the respondent was serving as Conductor in the Corporation since 1976 and he was attached to Radhanpur Depot of the Corporation. It is stated in the petition that the respondent was on duty as Conductor on S.T. Bus No. 8519 of Local Radhanpur-Antarnas route and when it reached at Parsund bus-stand at about 2.00 p.m. it was checked by the Line Checking Inspector and after checking the same the reporter submitted the report against the respondent on 2.5.80 and on the basis of the said report the respondent was chargesheeted on 28.5.80 and in all six charges were set out in the chargesheet which were in the nature of non-issuance of tickets to the passengers, non-collection of the bus fare from them, non-collection of proper fare from the passengers etc. It was further stated in the petition that the respondent had refused to sign the statement recorded of the passengers relating to the charges levelled against the respondent and he also did not give his statement relating to these charges. It was further alleged that the respondent also disobeyed the lawful and reasonable orders of the superior officer and he went away from his duty leaving his cash bag and tray at the site and thus by the aforesaid act of misconduct the respondent contravened clauses 7(a), 12(b), 23, 27, 29 of Schedule A of the Gujarat State Road Transport Corporation Employees (Discipline and Appeal) Procedure.

3. Pursuant to the said chargesheet an inquiry was initiated against the respondent and it was numbered as Default Case No. 106/1980. On completion of the inquiry, the Inquiry Officer had come to the conclusion that the charges levelled against the respondent were established and on that basis, the competent authority had issued a show cause notice dated 21-4-81 against the respondent as to why the respondent should not be dismissed from service. It appears that the respondent has not given any reply to the said show cause notice and he was dismissed from service by an order dated 20.11.81.

4. Being aggrieved and dissatisfied with the said order, the respondent has preferred First Appeal to the First Appellate Authority which was rejected on 2-3-1982

and hence the Second Appeal was preferred by the respondent to the Second Appellate Authority. The Second Appellate Authority, vide his order dated 6.4.83 reduced the punishment of the respondent and directed the petitioner Corporation for the reinstatement of the respondent in service with continuity of service, putting him on his minimum basic pay and directing that the intervening period commencing from 20.11.81 to 6.4.83 was to be treated as leave without pay.

5. The respondent, thereafter, moved Reference (IT) No. 332/1988 in the Industrial Tribunal, Ahmedabad, challenging the order of the Second Appellate Authority decided on 6-4-83 praying for cancellation of the said order and further praying for reimbursement for the financial loss sufferred by him during the period from 20.11.81 to 6.4.83. The Industrial Tribunal, vide its award dated 26th June 1992 had cancelled the order of the Second Appellate Authority and directed the petitioner-Corporation to consider the service of the respondent as continued and to pay the salary to the respondent for the period during which he was not in service. It is this order of the Industrial Tribunal which is under challenge before this Court.

6. The petitioner Corporation has submitted that the Industrial Tribunal has committed serious error of law in exercising the jurisdiction over the decision of the Corporation dismissing the respondent employee after the departmental inquiry and after giving the employee sufficient opportunity of being heard. It is further submitted that the Industrial Tribunal, when charges were proved, could not have sat in appeal over the decision of the Corporation as per the settled position of the law. The petitioner Corporation has further contended that the respondent has not challenged the disciplinary proceedings and once the disciplinary authority has found that the respondent has committed misconduct the action of the disciplinary authority could not be said to be illegal or improper. The petitioner-Corporation has further submitted that the Industrial Tribunal has not considered the glaring facts about the respondent as in the past also the respondent was involved in such misconduct 7 times and the respondent was imposed minor penalties of warning and fine. It is also submitted that the respondent has not issued tickets to different groups of passengers nor collected amount from them and though the amount was collected from certain passengers no tickets were issued to them. This act of the respondent tantamounts to dishonesty and ill-motive. Lastly, it was submitted that there was total non-application of mind to

the facts of the case and to the previous default report of the respondent, by the Industrial Tribunal and hence the award passed by the Industrial Tribunal was not justified whereby the order of the Second Appellate Authority of the respondent Corporation was modified. It was therefore prayed that the said order be quashed and set aside by this Court.

7. It is important to note here that at the time when the present petition was admitted by this Court and Rule was issued, this Court has passed an interim order to the effect that as far as the direction as regards the payment of backwages for the intervening period commencing from November 20, 1981 to April 6, 1983 was concerned, the petitioner Corporation was at liberty to withhold the payment of the amount of backwages on condition that in case the petitioner-Corporation loses in the petition and is required to make the payment of the amount awarded by the Industrial Tribunal or any other amount as may be directed by this Court, the same would be paid to the respondent-workman with 12% interest.

8. Ms. Krishna C. Thakkar, learned advocate appearing for Mr. Yogesh Lakhani on behalf of the petitioner has submitted that the Industrial Tribunal is not justified in modifying the order passed by the Second Appellate Authority. She has further submitted that the disciplinary authority has found the respondent guilty of misconduct and the order of dismissal passed by the disciplinary authority was confirmed in appeal by the First Appellate Authority and thereafter in Second Appeal, the said order was modified by the Second Appellate Authority by reinstating the respondent but at the same time by reducing the penalty to the effect that the respondent should be put on his minimum basic pay and by directing that the intervening period commencing from 20.11.81 to 6.4.83 should be treated as leave without pay. There was no justification in disturbing the said order of the Second Appellate Authority. She has further submitted that the Industrial Tribunal has held that the respondent workman has committed misconduct and once having held to this effect, it is not proper for the Industrial Tribunal to disturb the order passed by the Second Appellate Authority. Ms. Thakkar, ld. advocate appearing for the petitioner-Corporation has relied on the judgment of the Apex Court in the case of U.P. State Road Transport Corpn. and Others Vs. A.K. Parul, reported in AIR 1999 S.C. 1552, wherein following the earlier judgment of the Supreme Court in the case of State Bank of India Vs. Samarendra Kishore Endow,

[(1994) 2 SCC 537], it is held that the imposition of proper punishment is within the discretion and judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it, but not to the High Court or to the Administrative Tribunal for the reasons that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The High Court, having found the charges proved, is not justified in interfering with the punishment imposed by the disciplinary authority.

9. The ld. advocate for the petitioner has further relied on the decision of the Hon'ble Supreme Court in the case of Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) Etc. Vs. Secretary, Sahakari Noukarara Sangh etc., reported in AIR 2000 S.C. 3129, wherein it is held that once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstalling the employees in service. It is further held that in case of proved misappropriation, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

10. Mr. R.V. Desai, the ld. advocate appearing for the respondent-workman, has supported the award passed by the Industrial Tribunal and he has further submitted that the Industrial Tribunal has at length dealt with all the issues raised before it and in a well-reasoned order, the Industrial Tribunal had come to the correct conclusion after appreciation of the proper facts and evidence on record and the same cannot be disturbed in a petition under Article 227 of the Constitution of India. In support of his contention, he has relied on the decision of the Hon'ble Supreme Court in the case of Mohd. Yunus vs. Mohd Mustaqim and Others, reported in AIR 1984 S.C. 38, wherein it is held that a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art. 227. The supervisory jurisdiction conferred on the High Courts under Art. 227 is limited to seeing that an inferior Court or Tribunal functions within the limits of its authority, and not to correct an error apparent on the face of the record, much less an error of law. In exercising the supervisory power under Art. 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.

11. Mr. Desai, the ld. advocate for the respondnent has relied on the decision of this Court in the case of Ravatsinh Ranubha Vs. V.S. Sinha or his successor & Ors., reported in 2001 (1) G.L.H. 764, wherein it is held that the jurisdiction of this Court under Articles 226 and 227 is supervisory, but the duty of this Court is to see that the lower Forums or the Tribunals function within the limits of their jurisdiction. This Court cannot correct the error apparent on the face of the record, much less an error of law. As this Court does not act as the Appellate Court or Tribunal, it would be beyond its competence to review or reweigh the evidence upon which the determination of the lower Court or Tribunal purports to be based, or to correct the errors of law in the decision. It may be stated that writ jurisdiction can be exercised not only in the cases where there is jurisdictional error or the procedural error inclusive of omission to act in conformity with the principles of natural justice, but also in the cases where the fundamental rights are violated, or enforcement of a legal right is necessary, or the authority disregarding the facts and materials on record, has arbitrarily passed the order leading to miscarriage of justice, or it has decided on extraneous consideration, or has passed the order in bad faith, or the order is perverse or unreasonable or absurd, or where interference in the interest of justice is necessary so as to do complete justice, or the question of consideration of statutory provisions is involved, or constitutional point is raised, or question relating to statutory duty or obligation is involved, or compliance or implementation of the order is difficult or injurious or confusing or embarrassing or places the party between the devil and the deep sea.

12. Mr. Desai has further relied on the decision of this Court in the case of Gujarat Water Supply and Sewerage Board & Anr. Vs. Ketanbhai Dinkarray Pandya, reported in 2001(2) GLR 1829, wherein it is held that :

> "As per the decision of the Apex Court in case of Ahmedabad Municipal Corporation v. Virendrakumar Jayantibhai Patel, 1998(1) GLR 17 (SC), as also the decision of this Court in case of Chhagan Ranchhod Kukavava vs. General Manager, W.R., Bombay, 1998 (1) GLH 461 as also the case reported in AIR 2000 SC 931, an order passed by the labour Court and/or the tribunal can be challenged under Arts. 226 and/or 227 of the

> Constitution of India only if there is any jurisdictional error or procedural error apparent on the face of the record. The High Court, while exercising its jurisdiction under Arts. 226 and/or 227 of the Constitution of India, cannot convert itself into a Court of Appeal and assess the sufficiency or otherwise of the evidence in support of the finding of fact reached by the competent Courts or the tribunal. Therefore, in view of the aforesaid decisions of this Court and of the Apex Court, since no infirmity and/or jurisdictional error has been pointed out by the learned Advocate for the petitioner-Board and since he has also not been able to establish that the findings of fact recorded by the labour Court are based on no evidence, this Court cannot interfere with the impugned order passed by the labour Court in the recovery applications. Therefore, there is no substance in the present petitions filed by the petitioner-Board. Accordingly, all these petitions are dismissed. (Para 35)".

13. I have considered the pleadings made by the respective parties. I have gone through the award passed by the Industrial Tribunal. I have also considered the arguments canvassed by the ld. advocates for the parties, and also applied my mind to the authorities cited by both the sides. Here, in the case on hand, it is an admitted position that the disciplinary authority had found the respondent-workman as guilty of misconduct. The inquiry proceedings were not challenged by the respondent. Pursuant to the inquiry, an order of dismissal was passed by the disciplinary authority and the said order was confirmed by the First Appellate Authority. On Second Appeal, the Second Appellate Authority has modified the order of the First Appellate Authority to the extent stated hereinabove whereby the respondent was reinstated in service. The respondent's grievance before the Industrial Tribunal was against putting him on his minimum basic pay and treating the intervening period from 20.11.81 to 6.4.83 as 'leave without pay'. The Second Appellate Authority has come to the above conclusion after appreciation of facts and evidence on record and after affording adequate opportunities to the respondent. The said order was challenged before the Industrial Tribunal and the Industrial Tribunal has modified the said order of the Second Appellate Authority contrary to the principles laid down by the Hon'ble Supreme Court in the judgments reported in AIR 1999 S.C. 1552 and AIR 2000 S.C. 3129.

The authorities cited by the ld. advocate appearing for the respondent would not help the respondent, in this wise that the Industrial Tribunal has disturbed the findings arrived at by the three authorities, namely Disciplinary Authority, First Appellate Authority and Second Appellate Authority. Even otherwise, the Industrial Tribunal has come to the conclusion that the charges levelled against the respondent-workman were proved and established, and once having come to such conclusion, the Industrial Tribunal was not justified in disturbing the punishment awarded by the Second Appellate Authority. It is contrary to the ratio laid down by the Hon'ble Supreme Court in the abovereferred decisions wherein it is specifically held, that once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstalling the employees in service. It is further held that in case of proved misappropriation, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

14. In view of the facts and circumstances of the present case and in view of the settled legal position, I am of the view that the Industrial Tribunal is not justified in modifying the order passed by the Second Appellate Authority. I, therefore, quash and set aside the award passed by the Industrial Tribunal and restore the order of the Second Appellate Authority. The petition is, therefore, allowed. Rule is made absolute with no order as to costs.

[K.A. Puj, J.]

rmr.